

# 'Nicole' faces perjury raps

by **EDU PUNAY**  
Philstar.com

JUSTICE Secretary Raul Gonzalez believes that "Nicole" and her lawyers could be charged with false testimony and perjury after she backtracked on her complaint that she was raped by US Marine Lance Corporal Daniel Smith.

Speaking to reporters last March 18, Gonzalez said it appeared that "we have been taken for a ride" in the Subic rape case.

"So many problems have been created by this. Foreign policy has been affected," he said. "So much time has been spent. It has split public opinion and caused a lot of emotional upsurge. So whatever she did has created a lot of problems for us."

Gonzalez said Nicole's recantation will have "no bearing" on Smith's appeal before the Court of Appeals since it is not part of the records of the trial.

"Unless you can convince the court to open the trial to admit the affidavit, this will not pass as newly discovered evidence," he said.

"Under the Rules of Court, there is such a thing as the court taking judicial knowledge or judicial cognizance of events that take place," he added.

Gonzalez said the CA justices are aware that Nicole had backtracked on her court testimony through the newspapers.

"That is only where this thing could play some role," he said. "It is up to the court if the justices subconsciously take cognizance of the affidavit. But technically, it should not be given weight."

Gonzalez said it is remote that the CA would allow a retrial of the case since Nicole is no longer in the country.

Nicole should not ask the court to reopen the case, he added.

He could not recall any case where recantation of the complainant or witness had been given weight after conviction of the accused, Gonzalez said.

## 'It was a family decision'

The mother of Nicole said yesterday her daughter's recantation was a family decision.

"(President Arroyo) has nothing to do with this," she told abs-cbnNEWS.com. "It was a family decision."

It was unlikely that they would consult the government because "the government has never helped us," she added.

Nicole's mother said her daughter wants to move on as she wants to get married abroad.

In a separate interview with GMA 7, Nicole's mother denied any alleged "US pressure" on her daughter to recant her testimony of the rape.

Speaking in Filipino, she said her family had decided to put an end to the "sad story" of her daughter.

"My family has grown tired of this (rape) case for the past three years," she said. "So we thought that that's enough."

Smith's lawyer admits firm notarized Nicole's affidavit

Jose Justiniano, Smith's counsel, told *The STAR*

a lawyer from his firm—Sycip Salazar Hernandez and Gatmaitan—notarized Nicole's affidavit but did not act as her legal counsel.

"Choice of client yan, it's a wrong concept to say that we acted as counsel for Nicole," he said.

Justiniano said the lawyer from his firm "simply notarized" the sworn statement of Nicole.

"If you go to a notary public to have a document notarized, does it mean lawyer *mo na 'yun?*" he asked.

If Evalyn Ursua wants to know about things, she should ask Nicole's mother who handed her the letter terminating her services, Justiniano said.

Ursua, Nicole's former lawyer, plans to charge Smith's counsels with unethical law practice for allegedly making Nicole execute an affidavit without her knowledge.

Ursua questioned why Nicole's sworn statement was executed in the office of Sycip Salazar Hernandez and Gatmaitan.

The lawyer who notarized Nicole's affidavit recanting her testimony during the Subic rape trial is an associate of the law firm defending Smith, she added.

Ursua said she will ask the Supreme Court to investigate the supposed "unethical practice" of Sycip Salazar Hernandez and Gatmaitan.

Nicole's affidavit of March 12, 2009 was a "secret" document that was made behind her back "under suspicious circumstances," she added.

Ursua said it was a "secret affidavit" that did not bind her as Nicole's counsel of record.

"How can I stop acting as counsel if I have not been terminated yet, when I did not know (about it)," she said.

Ursua said the validity, voluntariness, and genuineness of the affidavit is questionable since Nicole cannot verify it.

Nicole's mother told her that there was no affidavit when she handed her a letter on March 16, 2009 informing her that her services were being terminated, Ursua added.

Ursua said the contents of the sworn statement did not come from Nicole.

"Yung language *na 'yun sa* level of articulation *ni Nicole, hindi kanya yan* (Nicole is not capable of that language and level of articulation)," she said.

"I know Nicole, I know how she talks, I know how she writes, that's not Nicole. That affidavit is not evidence, not part of the evidence."

## Smith's transfer on hold

The government will not ask for Smith's transfer to Philippine custody while awaiting the courts' evaluation and decision on the issue, the Department of Foreign Affairs said.

DFA spokesperson J. Eduardo Malaya said Smith will remain at the US embassy while they consult the agencies concerned before it complies with the Supreme Court order to move him to a Philippine facility. ■

# Manny hooks up with ABS-CBN

by **DANTE NAVARRO**  
Philstar.com

FILIPINO boxing icon Manny Pacquiao last March 18 announced his decision to sign up with ABS-CBN for the telecast of his future fights, including his May 2 showdown with British superstar Ricky Hatton despite a live contract with Solar Sports which has a tie-up with GMA-7.

Pacquiao said he had carefully studied his options and decided to link up again with ABS-CBN, his former partner before he moved over to GMA-7.

"Pagkatapos kong pag-iisipang mabuti nilapitan ko ang ABS-CBN at napagpasyahan ko pong makipag-partner muli sa kanila (After thinking it over I approached ABS-CBN and decided to team up again with them)," Pacquiao, the reigning pound-for-pound king, said last March 18 in a broadcast from Los Angeles where he has been training.

"We are very happy with the decision of Manny Pacquiao to

be his partner in future fights, including the Pacquiao-Hatton fight on May 2. As his former media partner, we will support Manny's campaign to bring honor to the Philippines and to his kababayans here and around the world," said Bong Osorio, ABS-CBN head of corporate communications, in a statement.

Solar Sports, which holds the TV rights for Pacquiao until 2012, could not be reached for comment at presstime although insiders said the Solar Sports officials are now studying their legal options.

Pacquiao, however, did not mention whether or not he has severed his ties with Solar Sports.

"Sarili ko itong desisyon (This is purely my decision)," said Pacquiao, who also thanked GMA-7. "Sa ABS-CBN mapapanood nyo ang laban ko kay Ricky Hatton at iba ko pang laban (You will see my fight with Hatton and future bouts over ABS-CBN.)"



Trainer Buboy Fernandez adjusts the headgear of Manny Pacquiao.

Photo by Mike Quedilla/MP Promotions

Sources from GMA-7, where Pacquiao has two shows, said the network is contemplating on filing legal charges against ABS-CBN.

ABS-CBN has aired some of Pacquiao's fights in the past including against Mexican Oscar Larios in July 2006. The network also telecast his matches to Filipinos overseas through ABS-CBN's The Filipino Channel.

Pacquiao also appealed for support from his fans especially in his upcoming fight against Hatton, considered as the Filipino fighter's toughest match to date. ■

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# Recantation to affect VFA review—Palace

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Members of the Senate were among the most vocal on the need to review the VFA, with some even pushing for its abrogation for failure of the Philippine government to get custody of Smith.

Just a few days after the SC handed down its ruling, Foreign Affairs Secretary Alberto Romulo met with US Ambassador Kristie Kenney to discuss the custody of Smith.

Kenney has noted that treaty experts of the State Department and the Philippine Department of Foreign Affairs (DFA) are now studying the matter.

She added that some experts would come to Manila but no time has yet been set.

US Embassy spokesperson Rebecca Thompson said US and Philippine officials in Washington have begun a dialogue on the return of Smith to Philippine custody and the VFA.

But Thompson did not comment on whether the dialogue was requested by US President Barack Obama, who called President Arroyo last March 14.

The diplomat also did not identify US government agencies participating in the dialogue.

Ermita admitted that Nicole's recantation and her subsequent decision to go to the US "for good" would have an effect on the decision-making process of the US government on the VFA.

The VFA was the basis for the move of the US embassy to secure Smith immediately after

his conviction, which drew heavy criticisms from the camp of Nicole as well as other sectors that joined her cause.

The Philippine government also took the position that custody of Smith would be with the US government until all appeals are exhausted.

The statement of Nicole and the testimonies of witnesses became the basis of the court in reaching its decision to convict Smith of rape.

Smith has filed an appeal before the CA, which is still deliberating on the case.

Ermita argued that there is still the possibility that the appeal of Smith would be successful, making moot the issue of custody.

He said that the tensions brought about by the case of Nicole could either end or be reduced if Smith's conviction is overturned.

"Let us just wait for the decision of the Court of Appeals. Because of the affidavit recanting and if ever the judgment is in favor of the accused, then there is nothing more to talk about on the issue of detention," he said.

He added that the government would continue its own review of the VFA, particularly on the controversial provisions.

"The so-called flaws are not really new and these are in continuous review by the executive branch, both by the Secretary of Foreign Affairs and the Secretary of National Defense," Ermita said.

Defense Secretary Gilbert Teodoro Jr. had supported the review of the VFA but stressed that this should be done only after the emotions over the case of Nicole have settled down.

## Petition to continue

Former senators and lawyers said they would continue with their petition before the SC to declare the VFA unconstitutional for being lopsided in favor of America, despite the decision of Nicole to recant her testimony.

In a statement, former senators Jovito Salonga and Wigberto Tañada and lawyer Harry Roque of the University of the Philippines' Law Center said they would not begrudge Nicole for entering into an out-of-court settlement with Smith because "it is her prerogative as an offended party."

However, they said that as petitioners in the SC case, the recantation of Nicole would not affect the issue of the constitutionality of the VFA.

"We filed our petition separate and distinct from Nicole in our capacity as citizens suing to impugn an agreement that violates our Constitution. When this case was scheduled by the High Court for oral arguments, Nicole was not a party to the case and was not notified of the oral arguments," they said.

The petitioners said at their suggestion, Nicole's lawyer, Evalyn Ursua, asked the High Court for permission to participate in the case. ■

# Arroyo not running for Congress

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Pampanga's second district was regular in the itinerary of Ms Arroyo.

On Feb. 24, she inaugurated an irrigation dam in Floridablanca town after gracing the awarding rites of the Integrated Bar of the Philippines-Pampanga chapter and addressing her kabalen (provincemates) in a unity rally held both at the Clark Freeport.

On March 4, she came to Barangay (Village) Natividad in Guagua town to hand P50,000 in livelihood assistance to 18 former rebels who surrendered to the military in the province of

Pampanga, Bulacan and Bataan.

On March 9, she tried to attend the Mass held for the 72nd birthday of San Fernando Archbishop Paciano Aniceto, but missed it. She caught up with him at past 2pm.

The next day, after holding a Cabinet meeting in Clark, she motored to Barangay San Roque in Lubao town where she met former rebels who surrendered their firearms.

Wednesday, March 18 she was back in Barangay Concepcion in Lubao for a meeting with farmers and leaders of irrigators' associations.

Last March 18 was also the second time since last year that she and losing gubernatorial candidate Lilia Pineda met again. Pineda hails from Concepcion. Ms Arroyo joined Pineda in her birthday celebration and thanksgiving Mass in February 2008.

The visits were always accompanied by medical and dental missions.

While she always rushed to leave for her next appointments, she spent time shaking hands and being photographed with local residents. ■

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